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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 93-53
)	
KR PARTNERS)	File No. BPH-911001MB
)	
KES COMMUNICATIONS, INC.)	File No. BPH-911003MH
)	
LORI LYNN FORBES)	File No. BPH-911004MH
)	
For Construction Permit for a)	
New FM Station on Channel 256C)	
in Waimea, Hawaii)	

To: Honorable Joseph P. Gonzalez
Administrative Law Judge

**PETITION TO ENLARGE THE ISSUES AGAINST
KR PARTNERS**

KES Communications, Inc. ("KES"), by Counsel, and pursuant to §1.229 of the Commission's Rules, hereby respectfully petitions the Presiding Judge to add the following issue against the application of KR Partners ("KR") in the above-captioned proceeding:

To determine whether the KR proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§1.1301 - 1.1319.

In support hereof, KES submits the following:

Timeliness

The instant petition is being filed within 30 days of the release of the *Hearing Designation Order*¹, and therefore

¹ DA 93-239 (released March 16, 1993)

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complies with the procedural directives enunciated in §1.229(b)(1) of the Commission's Rules.

Background

KR, formerly known as "Julie K. O'Connor," originally filed its Waimea application with the FCC on October 1, 1991. One day later, on October 2, 1991, KR filed an amendment. According to counsel's cover letter that accompanied KR's October 2, 1991 amendment, "[t]he purpose of this amendment is to file, within the appropriate window, the original (Section

Not only is the applicant's name improperly identified throughout the entire environmental exhibit, but the location of the proposed radio station is listed as a place in the State of Maine. For example:

This application proposes construction of a new FM radio station near Kaupulehu Crater in Acadia National Park, Maine.

Among other users at the site are National

Pursuant to §1.229(e) of the Commission's Rules, KES is submitting herewith as "Exhibit No. 3" information about further discovery it intends to conduct if the requested issue is added against KR.

Conclusion

WHEREFORE, the above premises considered, KES respectfully urges the Presiding Judge to grant this Petition and to designate the following issue against the application of KR:

To determine whether the KR proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§1.1301 - 1.1319.

Respectfully submitted,

KES COMMUNICATIONS, INC.

By: 
Cary S. Tepper, Esq.

Its Attorney

Meyer, Faller, Weisman & Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015

(202) 362-1100

March 25, 1993

EXHIBIT No. 1

(KR's 10/2/91 Cover Letter and
Statement B Environmental Statement)

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

OCT 2 - 1991

THE MCPHERSON BUILDING

901 FIFTEENTH STREET, N.W. SUITE 1100

WASHINGTON, D.C. 20005

(202) 682-3500

TELECOPY NUMBER

(202) 682-3580

425 PARK AVENUE
NEW YORK, N.Y. 10022
212 836-8000

999 AVENUE OF THE STARS
SUITE 1600
LOS ANGELES, CA 90067
213 788-1000

WRITER'S DIRECT DIAL NUMBER

Federal Communications Commission
Office of the Secretary

ADMIRALTY CENTRE
TOWER - 32ND FLOOR
18 HARCOURT ROAD
HONG KONG
8521 865-7676

SQUARE DE MEEÛS 30
1040 BRUSSELS, BELGIUM
3221 514-4300

(202) 682-3538

October 2, 1991

Ms. Donna R. Searcy
Secretary
Federal Communications Commissions
1919 M Street, N.W.
Washington, D.C. 20554

Re: Julie K. O'Connor
Waimea, Hawaii
October 3, 1991 Window Filing for Channel 256C

Dear Ms. Searcy:

BP4-911001 MB

On behalf of Julie K. O'Connor, applicant for a new FM broadcast station to operate on Channel 256C at Waimea, Hawaii, there is transmitted herewith an amendment to her application.

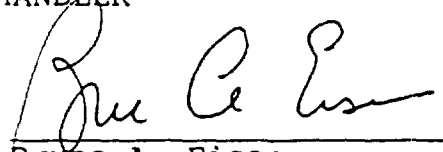
The window for Channel 256 filings at Waimea closes on October 3, 1991. On October 1, 1991, Julie K. O'Connor filed her application, attaching a copy - not an original - of the FCC Form 301, Section V-B Technical Information. The purpose of this amendment is to file, within the appropriate window, the original engineering Exhibit.

Should any questions arise with regard to this matter, kindly communicate directly with this office.

Respectfully submitted,

KAYE, SCHOLER, FIERMAN, HAYS
& HANDLER

By:


Bruce A. Eisen

BAE:cah

Enclosure

ENVIRONMENTAL CONSIDERATIONS

prepared for
Julie K. O'Connor
Waimea, Hawaii

Ch 256C 42 kW (H&V) 860 m

The instant proposal is not believed to have a significant environmental impact as defined under Section 1.1306 of the Commission's Rules. Consequently, preparation of an Environmental Assessment is not required. The following information was provided by the applicant.

Nature of The Proposal

This application proposes construction of a new FM radio station near Kaupulehu Crater in Acadia National Park, Maine. Although the site is located within a National Park, preparation of an environmental assessment is not believed to be required. Pierless submits the following information for consideration by the Commission.

Pierless proposes to side mount a two bay Shively model 6810 antenna near the top of an existing 50 foot antenna structure owned by the National Park Service (NPS). An existing NPS antenna will be relocated at a lower elevation on the tower. There will be no change in the overall structure height if this construction permit is granted and construction is completed.

In addition to the tower proposed for use by Pierless, the proposed site has two buildings which support roof mounted antennae. These buildings and antennae are used by a variety of Federal, State and local governmental agencies for land mobile transmitters. The site is, therefore, a developed radio transmitting site. Among other users at the site are National Park Service, FBI, Maine State Police, Hancock County Sheriff's Department, and the Bar Harbor Police Department.

Pierless has negotiated an agreement with the National Park Service for use of the site. Mr. John Hauptman, Supervisor of Acadia National Park has consented to the proposed Pierless installation. The applicant has made a promise to accept and encourage other radio users to locate at the site. Pierless believes that at least one, if not more, broadcast facilities can operate from this location.

(2)

Pierless intends to construct a building in accordance with Park Service guidelines, so as to minimize the visual impact of the proposed construction. This may, ultimately entail construction of a below ground building. The site area, including the existing buildings and NPS tower, is currently fenced.

Section 1.1306(b), Note 1, indicates that the use of existing towers is environmentally desirable. Since the site currently accommodates a multitude of radio users, and use of the site by Pierless has been approved by the National Park Service, it is believed that preparation of an environmental assessment is not required, and this proposal may be categorically excluded from environmental processing.

Human Exposure to Radiofrequency Radiation

The proposed transmitting system will comply with the guidelines for human exposure to RF radiation contained in ANSI guideline C95.1-1982. The FCC has adopted the ANSI guideline as the maximum allowable exposure levels for humans in the vicinity of transmitting antennas.

The proposed installation has been studied using the criteria set forth in FCC OST Bulletin No. 65 criteria. Under Commission policy, a facility may be presumed to comply with FCC environmental rules if the calculated RF energy level at any point on the ground does not exceed the ANSI C95.1-1982 Radio Frequency Protection Guide (ANSI RFPG).

The tower proposed for use herein will support both the proposed Pierless operation and a land mobile (intermittent duty) antenna. Pierless has proposed use of a two bay Shively Model 6810 antenna at a height of 13.2 meters above ground. When the vertical radiation characteristics of this antenna are employed, the RF exposure levels at 2 meters

~~above the ground will not exceed the ANSI guideline. The other radiation patterns of the~~

(3)

Exposure levels were computed for points two meters above ground level, with points being located based on intervals of depression angles from the proposed antenna radiation center. The direct path (slant distance) from the radiation center was used in the formulae of OST Bulletin No. 65 for determination of the exposure level at two meters above ground.

As shown in Table 1, the worst case exposure level is well below the 1000 $\mu\text{W}/\text{cm}^2$ ANSI guideline limit for continuous exposure. Thus, Pierless will comply with the Commission's Rules regarding human exposure to RF radiation.

The site is currently fenced to limit access to authorized personnel only. Pierless will post signs to alert workers that potential RF hazards may exist above ground level. A policy will be developed in conjunction with NPS which sets forth positive measures to ensure worker safety. Such measures might include, but are not limited to, reduction of power or station shutdown.

In the event that other users seek to operate from this site, Pierless will cooperate to the extent required by the FCC Rules and NPS to ensure worker and public safety. It is anticipated that other users could be accommodated with lower power levels, tower height increases (if approved by NPS) and/or specially designed antennas.

Conclusion

Based on the above information, it is believed that the instant proposal may be categorically excluded from environmental processing under Section 1.1306 of the Rules. Pierless will supply further information upon request.

EXHIBIT No. 2

(Map of the State of Maine)

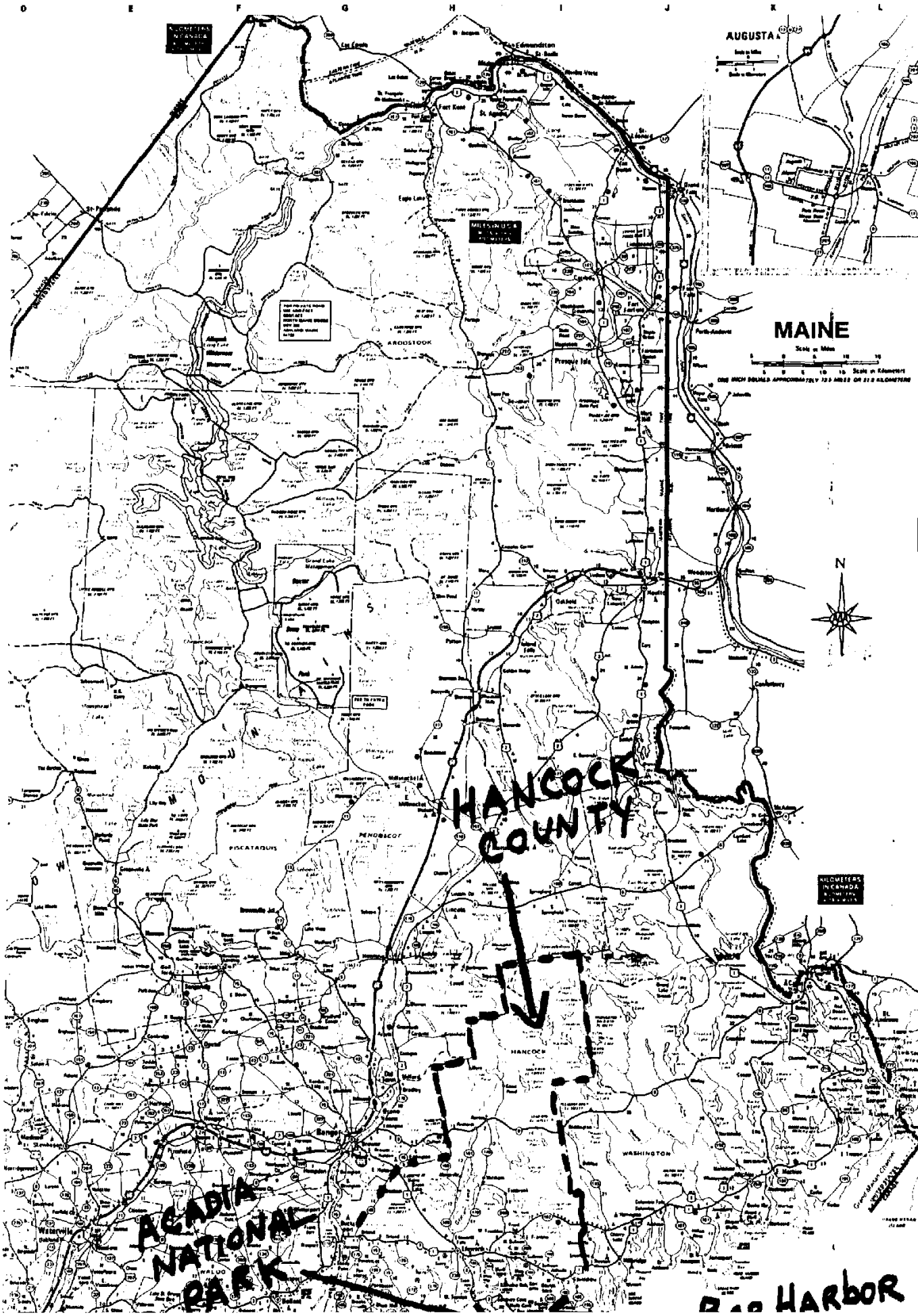


EXHIBIT No. 3

(Proposed Supplemental Discovery)

ENVIRONMENTAL TOXIC AND CHEMISTRY

of its principals or agents (including Ann Gallagher and/or her engineering firm) that relates to the nature of the radio proposal of KR Partners, the use of the specified transmitter site and the calculation of ANSI RF radiation compliance.

2. Any and all other documents that KR Partners intends to offer as relevant to the disposal of the requested issue.

CERTIFICATE OF SERVICE

I, Cary S. Tepper, Esquire, hereby certify that on this 25th day of March, 1993, I have served a copy of the foregoing "Petition to Enlarge the Issues Against KR Partners" first-class, postage-prepaid, on the following:

*Hon. Joseph P. Gonzalez
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 221
Washington, D.C. 20554

*Gary Schonman, Esq.
Hearing Division, Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

Dan J. Alpert, Esq.
1250 Connecticut Avenue, N.W.
7th Floor
Washington, D.C. 20036
(Counsel to Lori Lynn Forbes)

Mark Van Bergh, Esq.
Waysdorf & Van Bergh
1000 Connecticut Avenue, N.W.
Suite 504
Washington, D.C. 20036
(Counsel to KR Partners)



Cary S. Tepper, Esq.

*denotes Delivery By Hand